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MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Patent No. 7,094,874	:	DECISION ON REQUEST
Peach et al.	:	FOR RECONSIDERATION OF
Issue Date: August 22, 2006	:	DECISION ON
Application No. 09/865,321	:	REQUEST FOR
Filed: May 23, 2001	:	RECONSIDERATION OF
Atty Docket No. D0028PNP;	:	PATENT TERM ADJUSTMENT
30436.57USU1	:	and
	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed November 21, 2008¹, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred ninety-six (696) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is GRANTED to the extent indicated herein. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **six hundred ninety-five (695)** days.

The B delay is 518 days, not 519 days. As the period from the filing date of the request for continued examination (RCE) to

¹ An initial request for reconsideration of patent term adjustment was timely filed on October 20, 2006, which was within 2 months of issuance of the patent. Further, the instant request for reconsideration, filed in light of the decision in Wyeth v. Dudas, 2008 WL 4445642 (D.D.C. September 30, 2008). This petition was timely filed within 2 months of the decision on renewed petition under 37 CFR 1.705(d) mailed October 1, 2008.

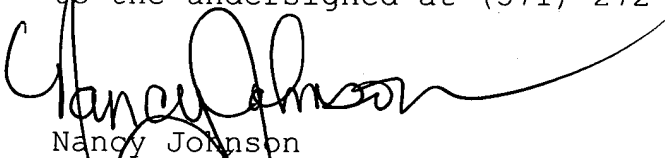
the issue date of the patent is not included in the period of B delay, the over three year period began on May 24, 2004, and ended on October 24, 2005, the day before the RCE was filed. See 35 U.S.C. § 154(b)(1)(B)(i).

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by six hundred ninety-five (695) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,094,874 B2

DATED : August 22, 2006

DRAFT

INVENTOR(S) : Peach et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 261 days

Delete the phrase "by 261 days" and insert – by 695 days--